IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Criminal Appeal No. 425 of 2003

Judgment reserved on 26.3.2007

Date of decision 29.3.2007

Parma Ram **…Appellant.**

Versus

State of H.P. **…Respondent.**

Coram

The Hon'ble Mr. Justice : Surjit Singh, Judge.
The Hon'ble Mr. Justice : Dev Darshan Sud, Judge.

Whether approved for reporting?

For the appellant : Mr. Sandeep Kaushik, with Mr. Virbhadur Singh, Advocates.

For the respondent : Mr. Som Dutt Vasudeva, Addl. Advocate General.

Surjit Singh, Judge

Appellant is aggrieved by the judgment of the trial Court, whereby he has been convicted of an offence, under Section 302 of the Indian Penal Code and sentenced to undergo rigorous imprisonment for life and to pay a fine of Rs.5,000/- and in default of payment of fine to undergo rigorous imprisonment for a further period of six months. His grievance is that the trial Court has not appreciated the evidence and the law correctly.

Whether reporters of Local Papers may be allowed to see the Judgment?

2. Prosecution version, believing which the trial Court has convicted and sentenced the appellant as aforesaid, may be summed up thus. On 9.3.2001 appellant, who is resident of village Runjh, went to attend a marriage function at the house of one Chiranji Lal. Next day he accompanied the 'Barat' (marriage party) to the bride's place. His wife Chandrawati (deceased) aged about 28 years also went to attend the marriage the next following day. Her father PW-1 Uttam remained at home to take care of the children. On 10.3.2001 around 7.00 p.m. deceased Chandrawati returned home, accompanied by PW-2 Suresh Chand. She went to the kitchen and started preparing meals. After working for some-time in the kitchen, she felt sick and told her father Uttam (PW-1) and Suresh Chand (PW-2) to do the rest of the cooking and she herself went to the sleeping room to take rest. Around 9.00 p.m. the appellant also returned. He went straight to the sleeping room and started quarrelling with the deceased. After some-time he was seen coming out of the room dragging Chandrawati deceased by her hair. Then he picked up a 'Darat' and dragged her through the court-yard into the fields. When PW-2 tried to intervene, he was given a slap on his face. Next morning the dead body of Chandrawati was found in the kitchen. Police was informed. Statement of PW-1 Uttam, the father of the deceased, was recorded, under Section 154 of the Code of Criminal procedure by the Police Officer, who reached the spot. On the basis of that statement case was formally registered. The dead body was sent for post mortem examination. PW-5 Dr. Jiwa Nand Chauhan conducted the post mortem examination. He noticed the following ante mortem injuries:-

"1. There was lacerated wound with crushed margins on right parietal area of size 4x2 c.m. bone deep, lot of clotted and dry fluid blood over and around the wound and also in the hairs around the wound with crushing of hairs at margins. There was a big underline contusion around the lacerated wound in the scalp tissue with underline anterior posterior hairline fracture of right parietal bone of length 6 c.m.

2. There was a lacerated crushed wound on occipital region of size 2x2 c.m. x bone deep with lot of dry and wet blood over and around the wound and on hairs with crushing of the hairs at margins. There was a big underline contusion around the wound in area of 6X6 c.m. over occipital region.

3. There was a lacerated crushed wound on the dorsom of right hand lying transversly on size 6x1x½ c.m. deep with irregular margins and wet and dry blood and dust over the wound was present with underline contusion around the wound and fracture of 2nd and 3rd metacarpals, hairline in the middle with clotted blood over fractured side.

4. One lacerated crushed wound on right upper arm posterior aspect, dust elbow joint of size 1x1 c.m. x none deep with fluid and clotted blood over and around the wound with underline contusion around the wound.

5. Multiple grazed abrasions of variable shapes and size in various directions dark brown in colour with clotted blood over them and at some places there was underline contusion present and were present on forehead, nose, whole face, chin, right upper eye lid, chest left side on the 1st and 2nd inter costal space, right middle of chest, both shoulders, both arms (upper and lower), both elbow, both hands, fingers, thoracolumbar spine, lateral and back side of left thigh and knee, front of left leg, front and lateral aspect of right thigh, front of left knee and leg with some blood drops over right lower leg and ankle joints.

6. There was extensive contusion underlying abrasions and all around the both thighs, hips, back of both groins, back of elbow, back of both legs, ante mortem in nature and brownish in colour.

7. There was a fracture of nasal bone with injury to nasal mucosa and bleedings from both nostrils with lot of clotted blood in both nostrils.

8. There was a big contusion underlying the abrasion on lumbar region and in both groins."

He opined that the cause of death was the combined effect of ante mortem head injury, injury to liver and haemerrohagic shock. He further opined that the injuries could have been caused with the blunt side of a 'Darat'. Slides of vaginal matter of the deceased were prepared and sent to the Chemical Examiner, who found human semen thereon. Blood was found on the clothes of the deceased, appellant / accused, 'Darat' and earth, stones and rubble etc. collected from the spot. The Investigating Officer noticed dragging marks through the court-yard and the fields.

3. Appellant took the plea that when he returned home around 9.00 p.m., he saw PW-2 Suresh Chand coming out of his bed room and when he entered the room, he noticed that his wife was not wearing 'Salwar' and the lower part of her body was naked. He also found that she was drunk. When he asked his wife as to why she was drunk and why she was not wearing the 'Salwar', she got up and ran out and in that process she fell from the edges of the court-yard and the fields, which are in the form of terraces and he found her lying unconscious with several injuries in the fourth field downwards.

4. The trial Court disbelieved the version of the appellant / accused. However, from the evidence on record it is made out that the deceased was drunk and she had had sexual intercourse also a few hours before her death.

5. PW-2 Suresh Chand though denied that the deceased was lying naked when the appellant came, yet admitted that he had accompanied the deceased to her house where she reached around 7.30 p.m. and that she was drunk and he had to physically help her by holding her by arm to reach her home. He also admitted that when around 9.00 p.m., the appellant reached his house, he was still there. He did not explain why he was there. It is admitted by him that he was slapped on his face by the appellant, though his plea is that he was slapped when he tried to rescue the deceased.

6. The report Ext. PR of the Chemical Examiner, to whom slides of vaginal smear of the deceased were sent for analysis, shows that semen was found on the vaginal slides.

7. Learned Additional Advocate General, placing reliance upon Modi's Medical Jurisprudence, stated that semen can be found in the vagina up to seventeen days after the sexual intercourse. As a matter of fact, in the treatise, from which the learned Additional Advocate General read out, it is mentioned that spermatozoa, which is different from semen, can be found in the vagina up to seventeen days after the sexual intercourse. Spermatozoa is the mature mortile male sex cell of an animal by which the ovum is fertilized, usually having a compact head and one or more flagella according to the dictionary meaning (The New Shorter Oxford English Dictionary Thumb Index Edition). Semen, on the other hand, according to the same dictionary, means reproductive fluid of male animals, containing spermatozoa in suspension. A comparison of the meaning of the two words shows that 'spermatozoa' is a cell, which is part of the fluid known as 'semen'. The fluid part gets flushed out, when the female

urinates after sexual intercourse, while some of the spermatozoa, which get separated from the fluid while rushing towards the ovum, may remain stuck to the walls of the vagina for quite some-time. Therefore, the presence of the semen in the vagina is an indication that sexual intercourse has taken place recently while the presence of spermatozoa may not lead to such a conclusion. Hence the contention of the learned Additional Advocate General is rejected.

8. Conduct of PW-1 Uttam and PW-2 Suresh Chand also suggests that they have not come out with whole truth. According to them, it was around 9.00 p.m. when the appellant returned home and soon thereafter he dragged the deceased towards the fields with a 'Darat' in his hand. PW-2 Suresh Chand says that he went straight to his home and reached there around 10.00 p.m. Neither of these two witnesses made any serious attempt to rescue the deceased nor did they try to seek the help of the co-villagers. Instead while PW-2 went straight to his home and slept there for the night, PW-1 Uttam, father of the deceased, per his own deposition, also slept with the children of the deceased for the night. This conduct of both the witnesses is quite unnatural, which suggests that there is something more to what they have stated, which they have tried to hide. What they have hidden can easily be gathered from the facts that the deceased was drunk, semen was there in her vagina and the appellant immediately on entering the room caught the deceased by her hair and dragged her out. In all probabilities PW-2 Suresh Chand, who found the deceased, per his own statement, in an inebriated state on the way to her home and helped her to reach home by holding her by the arm, was there

in the room, when the appellant entered the room. The accused / appellant suspected that this witness had had sexual intercourse with the deceased.

9. Learned Additional Advocate General argued, by making reference to the judgment of the trial Court that PW-2 Suresh Chand was only fifteen years of age at the time of the occurrence and, therefore, he was not capable of performing intercourse. The argument cannot be accepted for two reasons: First, an adolescent is fully capable of performing sexual intercourse and not only this, he is more curious to experience the sexual pleasure. In any case the material relied upon by the trial Court in coming to the conclusion that PW-2 Suresh Chand was only fifteen years of age, is inadmissible in evidence. The trial Court has referred to the statement, under Section 161 of the Code of Criminal Procedure of this witness, wherein while stating his particulars he got his age recorded as fifteen years. The age appearing in the particulars part of the statement of a witness is not part of the statement. Moreover, the statement itself could not have been used for the purpose, in view of the bar contained in Section 162 of the Code of Criminal Procedure. In fact there is positive evidence on record suggesting that PW-2 Suresh Chand was not less than eighteen years of age at the relevant time. The witness in the course of cross-examination stated that he went to the school at the age of six and failed twice in the tenth standard. That means for twelve years he had been going to the school and when he started going to the school he was already six years old. He did not say when he left the school. Therefore, it can legitimately be concluded that he was at-least eighteen years of age, if not more. A young boy of seventeen or eighteen years is not only capable of sexual intercourse, but even enjoys it like a fully grown up man.

10. The other part of the plea of the appellant, viz. the deceased ran out of the room and then fell from the edge of the court-yard into a field downward and from that field into another field further downward and ultimately landed in the fourth field downward, is unbelievable. A person after first fall into a field, which is supposed to be wide enough for the movement of bullocks in the yoke, cannot have further fall or in any case four falls in as many fields, in succession, especially when he or she is intoxicated as the deceased in this case was. Also, the doctor has given definite opinion that all the injuries, noticed on the person of the deceased, could not have been caused by fall and that the head injury had been caused by some blunt weapon, which could be blunt side of 'Darat' Ext. P-1. 'Darat' was recovered from the house of the appellant. It was stained with blood. It was sent to the Chemical Examiner for his opinion. The Chemical Examiner opined that it bore stains of human blood of group 'A'. The Chemical Examiner also found stains of human blood of the same group on the shirt and the pant of the appellant and shirt and underwear of deceased Chandrawati. That means the 'Darat' and the clothes of the appellant had the stains of blood of the deceased on them, which fact leads to the conclusion that the 'Darat' was used by the appellant to inflict the fatal injuries on the head of the deceased.

11. From the facts and the circumstances of the case, as noticed hereinabove, it is made out that the appellant killed his wife, while deprived of the power of self-control by gave and sudden provocation given by the deceased on account of her being drunk, naked and in the company of a young man in her bed room, when the appellant all of a sudden returned

home and noticed all these things. The case is covered by Exception-I to Section 300 of the Indian penal Code.

12. Now, the question arises whether the offence is covered by the first part or the second part of Section 304 of the Indian penal Code. The appellant used a 'Darat' and hit the deceased on the head with its blunt side. Therefore, it can legitimately be assumed that he gave the blows of 'Darat' with the intention of causing death or at-least with the intention of causing such bodily injuries as were likely to cause death. Therefore, it is held that his offence is covered by first part and not the second part of Section 304 of the Indian penal Code.

13. As an upshot of the above discussion and findings, appeal is partly accepted. Conviction of the appellant for the offence, under Section 302 of the Indian Penal Code and the sentence for the said offence as awarded by the trial Court are set aside. Instead, the appellant is convicted of the offence, under Section 304 first part of the Indian Penal Code and sentenced to undergo rigorous imprisonment for seven years and to pay a fine of Rs.2,000/- and in default of payment of fine to undergo simple imprisonment for a further period of six months. Appeal stands disposed of accordingly.

(Surjit Singh)
Judge

(Dev Darshan Sud)
Judge

March 29, 2007 (BC)